

Message

From: Luetscher, Greg [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=4BFC6EB465A543128E5C7E7DF9F982CE-LUETSCHER, GREGORY]
Sent: 5/9/2017 3:19:21 PM
To: Ware, Ethan [eware@williamsmullen.com]
CC: 'Tindal, Evans' [Evans.Tindal@Takata.com]; Burkhart, Scott [Scott.Burkhart@Takata.com]; Jackson, David [David.Jackson@Takata.com]; Ramsey, Vaughn [vramsey@tuggleduggins.com]; Evenson, Peter O. [PEvenson@tuggleduggins.com]; King, Jessica [jking@williamsmullen.com]
BCC: Huyser, Matthew [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=e69c4e020ec94d2d9143cfb0e04806a2-Huyser, Matthew]
Subject: RE: HIGHLANDS INDUSTRIES: PCB Release by Burlington (Burlington Industries Site)

Ethan,

I have received your email, below. Regrettably, the news release from the Town of Cheraw, which you describe in the second paragraph of your email as an attachment, did not arrive with your email, so I am unable to discuss whatever information it may have contained. In addition, I am not aware of any Order (Section 107 of CERCLA or otherwise) currently in effect regarding the Burlington Industries Site. As a consequence, I'm perplexed by your reference to "the 107 Order," which you explain requires that EPA involve Highland "in public participation obligations set out in the NCP."

Accordingly, I would appreciate it if you would try again to forward a copy of the news release from the Town of Cheraw, as it apparently did not survive passage through EPA's servers. And I'd be pleased to discuss whatever obligations may be set out in the 107 Order you reference below, once I've been able to locate and review the particular document. In the meantime, should you have any questions pertaining to EPA's activities involving the Town of Cheraw and/or the Burlington Industries Site, or for any other reason, please do not hesitate to give me a call. I will endeavor to learn whatever I may not already know and, to the extent I have the authority, pass it along to you.

Thanks.

Greg

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From: Ware, Ethan [mailto:eware@williamsmullen.com]
Sent: Friday, May 05, 2017 8:41 AM
To: Luetscher, Greg <Luetscher.Greg@epa.gov>
Cc: 'Tindal, Evans' <Evans.Tindal@Takata.com>; Burkhart, Scott <Scott.Burkhart@Takata.com>; Jackson, David <David.Jackson@Takata.com>; Ramsey, Vaughn <vramsey@tuggleduggins.com>; Evenson, Peter O. <PEvenson@tuggleduggins.com>; King, Jessica <jking@williamsmullen.com>
Subject: HIGHLANDS INDUSTRIES: PCB Release by Burlington [IWOV-IWOVRIC.FID1622654]

Greg-

As you know, we represent Highland Industries, Inc. ("Highland"), which is the current owner of a plant from which EPA alleges a prior owner or operator discharged PCB wastes. We are writing to request EPA involve Highland in all future public participation involving the site as mandated by the NCP.

Attached is a news release from the Town of Cheraw. It has an entry indicating EPA will return to the Town on May 10 to discuss the PCB release. This is the first we have heard of EPA returning to the Town to discuss the site, despite our almost uninterrupted communications with you on the terms of the Action Memorandum and Model Order

on Consent to perform a removal action at the Site. To date, Highland believes a culpable PRP is BGF Industries and EPA has yet to submit BGF a notification of liability despite substantial evidence BGF expressly assumed liability for the PCB release. See, PCS Nitrogen, et al v. Ashley II of Charleston, et al, 714 F3d 161,173 (4th Cir. 2013)(holding a company purchasing assets is liable under CERCLA 107 if it expressly or impliedly assumes the liability for CERCLA cleanup in the purchase agreement, as is the case with BGF purchase of the PCB business from Burlington Industries).

We are in negotiations with EPA on the terms of a consent order to perform a bulk of the PCB cleanup from BGF/Burlington operations, the release of which Highland Industries did not cause. In sum, Highland is alleged to be a PRP, but not the culpable PRP. We have cooperated with EPA extensively so far, and we are disappointed EPA is now leaving our client out of communications and public participation involving the cleanup. This lack of cooperation from EPA indicates to us and Highland EPA no longer values our participation in the process and if that is the case, please let us know right away, so we may evaluate the need to terminate negotiations on the cleanup.

Going forward, we request two things from EPA. First, please keep us involved in EPA's public participation efforts involving the PCB release by Burlington. We value our employees in Cheraw and not knowing when EPA is acting or reaching out to the community prevents us from informing the employees of the status of the cleanup. The 107 Order requires EPA involve us in the public participation requirements of the NCP, so a decision by staff to forgo compliance with the NCP suggests bad faith and a lack of interest in cooperation with Highland. We hope this is not the case.

Second, we can be of great assistance in getting information to the Cheraw community, so please allow us to be present and participate in Cheraw meetings of all types. If your staff does not intend to allow us to participate, please let us know. We will develop our own public participation program, if that is the case or consider other options to defend the company's name and liability.

We hope EPA understands the difficult position lack of communication has placed us. Please help us avoid this problem in the future by keeping Highland informed of the EPA public participation process as the statute and regulations require.

Ethan Ware

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